

1 THE HONORABLE RONALD B. LEIGHTON
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SHERYL FIFE, individually and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 SCIENTIFIC GAMES CORP.,

Defendant.

No. 2:18-cv-00565-RBL

DEFENDANT SCIENTIFIC GAMES
CORPORATION'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S CLASS ACTION
COMPLAINT

1 Defendant Scientific Games Corporation (“Defendant”), for its answer and affirmative
 2 and other defenses to the putative Class Action Complaint (“Complaint”) of plaintiff Sheryl Fife
 3 (“Plaintiff”), states:

4 1. Scientific Games admits that it owns and operates online games including Jackpot
 5 Party Casino and Gold Fish Casino. Scientific Games denies the remaining allegations in
 6 Paragraph 1.

7 2. Scientific Games admits that it offers video games that include casino-themed
 8 games for play on Android, Apple iOS devices, and Facebook. Scientific Games denies the
 9 remaining allegations in Paragraph 2.

10 3. Scientific Games admits that it provides free virtual coins to a game’s user at
 11 various times throughout game play, including when a user first plays the game, and that the coins
 12 are used to play the game. Scientific Games further admits that users may, but are not required, to
 13 purchase additional coins. Scientific Games denies the remaining allegations in Paragraph 3.

14 4. Scientific Games denies the allegations in Paragraph 4.

15 5. The allegations in Paragraph 5 state legal conclusions to which no response is
 16 required. To the extent a response is required, Scientific Games admits that Plaintiff purports to
 17 bring this suit on behalf of herself and other unnamed individuals. Scientific Games denies that
 18 any putative class is amenable to class certification or that Plaintiff can satisfy the requirements of
 19 Rule 23; that Plaintiff or putative class members suffered any recoverable losses; that Scientific
 20 Games violated Washington law; or that Scientific Games “illegally profited.” Scientific Games
 21 denies the remaining allegations in Paragraph 5.

22 6. Scientific Games lacks knowledge or information sufficient to form a belief as to
 23 the truth of the allegations in Paragraph 6 and, on that basis, denies the allegations.

24 7. Scientific Games admits that it is incorporated in Nevada and has its principal place
 25 of business at 6601 Bermuda Road, Las Vegas, Nevada 89119. Scientific Games denies the
 26 remaining allegations in Paragraph 7.

1 8. Scientific Games admits that it is a Nevada corporation. The remaining allegations
2 in Paragraph 8 state legal conclusions to which no response is required. To the extent a response
3 is required, Scientific Games denies the remaining allegations in Paragraph 8.

4 9. The allegations in Paragraph 9 state legal conclusions to which no response is
5 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
6 9.

7 10. The allegations in Paragraph 10 state legal conclusions to which no response is
8 required. To the extent a response is required, Scientific Games lacks knowledge or information
9 sufficient to form a belief as to the truth of the allegations in Paragraph 10 and, on that basis, denies
10 the allegations.

11 11. Scientific Games lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 11 and, on that basis, denies the allegations.

13 12. Scientific Games lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 12 and, on that basis, denies the allegations. In response
15 to the allegations in Paragraph 12 that purport to quote from documents, Scientific Games responds
16 that the documents speak for themselves.

17 13. Scientific Games lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations in Paragraph 13 and, on that basis, denies the allegations. In response
19 to the allegations in Paragraph 13 that purport to quote from a document, Scientific Games
20 responds that the document speaks for itself.

21 14. Scientific Games lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations in Paragraph 14 and, on that basis, denies the allegations. In response
23 to the allegations in Paragraph 14 that purport to quote from a document, Scientific Games
24 responds that the document speaks for itself.

25 15. Scientific Games lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations in Paragraph 15 and, on that basis, denies the allegations. In response

1 to the allegations in Paragraph 15 that purport to quote from a document, Scientific Games
 2 responds that the document speaks for itself.

3 16. Scientific Games lacks knowledge or information sufficient to form a belief as to
 4 the truth of the allegations in Paragraph 16 and, on that basis, denies the allegations. In response
 5 to the allegations in Paragraph 16 that purport to quote from a document, Scientific Games
 6 responds that the document speaks for itself.

7 17. Scientific Games lacks knowledge or information sufficient to form a belief as to
 8 the truth of the allegations in Paragraph 17 and, on that basis, denies the allegations. In response
 9 to the allegations in Paragraph 17 that purport to quote from a document, Scientific Games
 10 responds that the document speaks for itself.

11 18. Scientific Games lacks knowledge or information sufficient to form a belief as to
 12 the truth of the allegations in Paragraph 18 and, on that basis, denies the allegations. In response
 13 to the allegations in Paragraph 18 that purport to quote from a document, Scientific Games
 14 responds that the document speaks for itself.

15 19. The allegations in Paragraph 19 include legal conclusions to which no response is
 16 required. To the extent a response is required, Scientific Games denies the allegations. Scientific
 17 Games lacks knowledge or information sufficient to form a belief as to the truth of the remaining
 18 allegations in Paragraph 19 and, on that basis, denies the allegations. In response to the allegations
 19 in Paragraph 19 that purport to quote from a document, Scientific Games responds that the
 20 document speaks for itself.

21 20. Scientific Games denies the allegations in Paragraph 20.

22 21. Scientific Games admits that individuals can play its social games on Apple iOS
 23 and Android devices or through Facebook. Scientific Games denies the remaining allegations in
 24 Paragraph 21.

25 22. Scientific Games admits that it released a press release stating the revenue it
 26 generated in the fourth quarter of 2017; the document speaks for itself. The remaining allegations

1 in Paragraph 22 include legal conclusions to which no response is required. To the extent a
 2 response is required, Scientific Games denies the remaining allegations in Paragraph 22.

3 23. Scientific Games admits that it provides free virtual coins to a game's user at
 4 various times throughout game play, including when a user first plays the game. Scientific Games
 5 denies the remaining allegations in Paragraph 23.

6 24. Scientific Games admits that a notification similar to the notification illustrated by
 7 Figure 1 has appeared and may appear at certain times during Jackpot Party Casino gameplay.
 8 Scientific Games denies the remaining allegations in Paragraph 24.

9 25. Scientific Games admits that a notification similar to the notification illustrated by
 10 Figure 2 has appeared and may appear at certain times during Jackpot Party Casino gameplay.
 11 Scientific Games denies that once players use their initial allotment of free coins, they cannot
 12 continue to play the game without buying more coins for real money. Scientific Games denies the
 13 remaining allegations in Paragraph 25.

14 26. Scientific Games denies the allegations in Paragraph 26.

15 27. Scientific Games admits that a toolbar similar to the toolbar illustrated by Figure 3
 16 appears during Jackpot Party Casino gameplay and that players choose various amounts of coins
 17 to use on each spin. Scientific Games denies the remaining allegations in Paragraph 27.

18 28. Scientific Games admits that certain of the outcomes of Scientific Games' social
 19 games are based in whole or in part on the operation of algorithms. Scientific Games denies the
 20 remaining allegations in Paragraph 28.

21 29. Scientific Games admits that the operation of certain aspects of its games are based
 22 in whole or in part on the operation of algorithms and that Scientific Games maintains certain
 23 records related to gameplay. Scientific Games denies the remaining allegations in Paragraph 29.

24 30. Scientific Games lacks knowledge or information sufficient to form a belief as to
 25 the truth of the allegations in Paragraph 30 and, on that basis, denies the allegations.

1 31. Scientific Games lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations in Paragraph 31 and, on that basis, denies the allegations.

3 32. Scientific Games admits that Plaintiff purports to bring this suit on behalf of herself
4 and other unnamed individuals who purchased virtual coins for certain of Scientific Games'
5 games. Scientific Games denies that any putative class is amenable to class certification or that
6 Plaintiff can satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. Scientific
7 Games denies the remaining allegations in Paragraph 32.

8 33. The allegations in Paragraph 33 state legal conclusions to which no response is
9 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
10 33.

11 34. The allegations in Paragraph 34 state legal conclusions to which no response is
12 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
13 34.

14 35. The allegations in Paragraph 35 state legal conclusions to which no response is
15 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
16 35.

17 36. The allegations in Paragraph 36 state legal conclusions to which no response is
18 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
19 36.

20 37. The allegations in Paragraph 37 state legal conclusions to which no response is
21 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
22 37.

23 38. The allegations in Paragraph 38 state legal conclusions to which no response is
24 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
25 38.

1 39. Scientific Games admits that Plaintiff purports to reserve certain rights. Scientific
2 Games denies the remaining allegations in Paragraph 39.

3 40. Scientific Games incorporates its foregoing responses to Paragraphs 1-39.

4 41. The allegations in Paragraph 41 state legal conclusions to which no response is
5 required. To the extent a response is required, Scientific Games lacks knowledge or information
6 sufficient to form a belief as to the truth of the allegations in Paragraph 41 and, on that basis, denies
7 the allegations.

8 42. The text of RCW 4.24.070 speaks for itself. Scientific Games denies the remaining
9 allegations of Paragraph 42.

10 43. The text of RCW 9.46.0237 speaks for itself. Scientific Games denies the remaining
11 allegations of Paragraph 43.

12 44. The allegations in Paragraph 44 state legal conclusions to which no response is
13 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
14 44.

15 45. The allegations in Paragraph 45 state legal conclusions to which no response is
16 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
17 45.

18 46. The allegations in Paragraph 46 state legal conclusions to which no response is
19 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
20 46.

21 47. The allegations in Paragraph 47 state legal conclusions to which no response is
22 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
23 47.

24 48. The allegations in Paragraph 48 state legal conclusions to which no response is
25 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
26 48.

1 49. The text of RCW 9.46.0285 speaks for itself. Scientific Games denies the remaining
2 allegations of Paragraph 49.

3 50. The allegations in Paragraph 50 state legal conclusions to which no response is
4 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
5 50.

6 51. The allegations in Paragraph 51 state legal conclusions to which no response is
7 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
8 51.

9 52. The text of RCW 9.46.0201 speaks for itself. The remaining allegations in
10 Paragraph 52 state legal conclusions to which no response is required. To the extent a response is
11 required, Scientific Games denies the remaining allegations in Paragraph 52.

12 53. The allegations in Paragraph 53 include legal conclusions to which no response is
13 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
14 53. Scientific Games denies that Plaintiff was harmed as a result of any alleged conduct by
15 Scientific Games, denies that any claims alleged in the Complaint may be brought on behalf of the
16 putative class, denies that Plaintiff is entitled to any relief from Scientific Games, and denies the
17 remaining allegations in Paragraph 53.

18 54. Scientific Games incorporates its foregoing responses to Paragraphs 1-53.

19 55. The allegations in Paragraph 55 include legal conclusions to which no response is
20 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
21 55.

22 56. The text of RCW 19.86.020 speaks for itself. Scientific Games denies the remaining
23 allegations in Paragraph 56.

24 57. The text of the Washington Consumer Protection Act speaks for itself. Scientific
25 Games denies the remaining allegations in Paragraph 57.

1 58. The allegations in Paragraph 58 include legal conclusions to which no response is
2 required. To the extent a response is required, Scientific Games denies that it violated RCW
3 9.46.010 and denies the remaining allegations in Paragraph 58. The text of the Act speaks for itself.

4 59. The allegations in Paragraph 59 state legal conclusions to which no response is
5 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
6 59.

7 60. The allegations in Paragraph 60 state legal conclusions to which no response is
8 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
9 60.

10 61. The allegations in Paragraph 61 state legal conclusions to which no response is
11 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
12 61.

13 62. The allegations in Paragraph 62 state legal conclusions to which no response is
14 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
15 62.

16 63. The allegations in Paragraph 63 state legal conclusions to which no response is
17 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
18 63.

19 64. The allegations in Paragraph 64 state legal conclusions to which no response is
20 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
21 64.

22 65. Scientific Games admits that Plaintiff purports to seek injunctive and monetary
23 relief on her own behalf and on behalf of unnamed and as-yet-unascertained individuals in this
24 action. Scientific Games denies that any putative class is amenable to class certification or that
25 Plaintiff can satisfy the requirements of Rule 23; that Plaintiff or putative class members suffered

1 any recoverable losses; or that Plaintiff or putative class members are entitled to any relief.

2 Scientific Games denies the remaining allegations in Paragraph 65.

3 66. Scientific Games incorporates its foregoing responses to Paragraphs 1-65.

4 67. The allegations in Paragraph 67 state legal conclusions to which no response is
5 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
6 67.

7 68. The allegations in Paragraph 68 state legal conclusions to which no response is
8 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
9 68.

10 69. The allegations in Paragraph 69 state legal conclusions to which no response is
11 required. To the extent a response is required, Scientific Games denies the allegations in Paragraph
12 69.

13 70. Scientific Games admits that Plaintiff purports to seek disgorgement and restitution
14 on her own behalf and on behalf of unnamed and as-yet-unascertained individuals in this action.
15 Scientific Games denies that any putative class is amenable to class certification or that Plaintiff
16 can satisfy the requirements of Rule 23; that Plaintiff or putative class members suffered any
17 recoverable losses; or that Plaintiff or putative class members are entitled to any relief. Scientific
18 Games denies the remaining allegations in Paragraph 70.

19

20 **PRAYER FOR RELIEF**

21 In response to Paragraphs a) through j) of Plaintiff's Prayer for Relief, Scientific Games
22 denies the allegations and denies that Plaintiff is entitled to the requested relief, or any other form
23 of relief. Scientific Games further denies all allegations set forth in Plaintiff's Complaint except
24 as expressly admitted above.

1 **AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

2 Scientific Games further responds to the Complaint by alleging the following defenses or
3 affirmative defenses. Insofar as any of the following affirmative defenses expresses denial of an
4 element of any claim alleged against Scientific Games, such expression does not indicate that
5 Plaintiff is relieved of her burden to prove each and every element of any such claim.

6

7 **FIRST DEFENSE**

8 **(Failure to State a Claim)**

9 The Complaint and each cause of action alleged fails to set forth facts sufficient to state a
10 claim upon which relief may be granted against Scientific Games, and further fails to state facts
11 sufficient to entitle Plaintiff or any members of the putative class to the relief sought or to any
12 other relief from Scientific Games.

13

14 **SECOND DEFENSE**

15 **(Failure to Mitigate)**

16 Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate damages,
17 if any. Similarly, members of the putative class that Plaintiff seeks to represent failed to mitigate
18 their claimed damages, if any.

19

20 **THIRD DEFENSE**

21 **(Waiver/Estoppe/Unclean Hands/Laches)**

22 Plaintiff's claims and those claims Plaintiff purports to bring on behalf of members of the
23 putative class are barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands,
24 and laches.

FOURTH DEFENSE

(Statute of Limitations)

Some or all of Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred by the applicable statutes of limitations.

FIFTH DEFENSE

(Washington Gambling Act)

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims relating to Scientific Games under the Washington Gambling Act, whether on behalf of herself or on behalf of members of the putative class. Scientific Games is entitled to each and every defense stated in the Washington Gambling Act and any and all limitations of liability.

SIXTH DEFENSE

(Recovery of Money Lost at Gambling Act)

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims relating to Scientific Games under Washington's Recovery of Money Lost at Gambling Act, whether on behalf of herself or on behalf of members of the putative class. Scientific Games is entitled to each and every defense stated in the Recovery of Money Lost at Gambling Act and any and all limitations of liability.

SEVENTH DEFENSE

(Washington Consumer Protection Act)

Plaintiff has not alleged and cannot establish the conditions precedent to asserting any claims relating to Scientific Games under the Washington Consumer Protection Act, whether on behalf of herself or on behalf of members of the putative class. Scientific Games is entitled to each

1 and every defense stated in the Washington Consumer Protection Act and any and all limitations
2 of liability.

3

4 **EIGHTH DEFENSE**

5 **(Ratification and Acquiescence)**

6 Upon information and belief, Plaintiff and the putative class members who she purports to
7 represent approved and/or participated in the conduct of which they now complain. As a result,
8 they are barred from bringing their claims under the doctrines of ratification and acquiescence.

9

10 **NINTH DEFENSE**

11 **(Voluntary Action)**

12 Plaintiff's claims and those claims Plaintiff purports to bring on behalf of members of the
13 putative class are barred by the fact that the purchases about which Plaintiff complains were made
14 voluntarily.

15

16 **TENTH DEFENSE**

17 **(Plaintiff's Comparative Fault and/or Assumption of Risk)**

18 Plaintiff's claimed damages, if any, are in whole or in part due to conditions that preexisted
19 or are unrelated to the claims alleged in the Complaint. The actions and/or omissions alleged in
20 the Complaint were caused by Plaintiff's own actions, Plaintiff's fault, comparative fault, and/or
21 assumption of risk, which conduct will bar Plaintiff's claims or reduce her claim in an amount to
22 be determined at trial. Similarly, the alleged injuries of the members of the putative class that
23 Plaintiff seeks to represent were caused, in whole or in party, by the class members' own actions.

**ELEVENTH DEFENSE
(No Attorneys' Fees)**

Plaintiff and the putative class members cannot establish facts sufficient to support their claim for attorneys' fees, and Plaintiff and the putative class members are not entitled to recover attorneys' fees in this action.

TWELFTH DEFENSE

All or part of the damages alleged in the Complaint, if they occurred, were caused by the acts and/or omissions of other person or entities for whose conduct Scientific Games is not legally responsible.

THIRTEENTH DEFENSE

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class are barred, in whole or in part, because Plaintiff and the putative class members lack standing to assert them.

FOURTEENTH DEFENSE

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class are barred because the Plaintiff and the putative class members entered into "bona fide business transactions" under RCW 9.46.0237 and/or that the Plaintiff and the putative class members received the benefit of their bargain while playing Scientific Games' games.

FIFTEENTH DEFENSE

(Good Faith, Reliance on Government Agencies)

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class are barred because Scientific Games relied in good faith upon a reasonable interpretation of Washington law and on guidance from relevant government agencies, including without limitation, the Washington State Gambling Commission.

SIXTEENTH DEFENSE

(Choice of Law)

Plaintiff and/or the members of the putative class who she purports to represent have contractually agreed to Nevada law as the exclusive governing law for Plaintiff's claims and/or those claims Plaintiff purports to bring on behalf of members of the putative class.

SEVENTEENTH DEFENSE

(Voluntary Payment Doctrine)

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred by the voluntary payment doctrine.

EIGHTEENTH DEFENSE

(Economic Loss Rules)

Plaintiff's claims, and those claims Plaintiff purports to bring on behalf of members of the putative class, are barred by the economic loss rule.

NINETEENTH DEFENSE (Contractual Limitations)

Plaintiff and the putative class members are barred from recovery based on the claims in the Complaint because of the terms to which Plaintiff and the putative class members agreed in the applicable terms of service.

TWENTIETH DEFENSE (Arbitration)

Absent members of the putative classes have a contractual obligation to arbitrate any claims they have arising out of or relating to Scientific Games' games.

TWENTY-FIRST DEFENSE

(Freedom of Speech)

Scientific Games, as the publisher of its games, each of which is an expressive work, is entitled to freedom-of-speech protection under the First Amendment of the U.S. Constitution, speech protections under the Washington State Constitution, and/or other applicable statutory or common-law privileges with respect to the protection of speech or expressive works. The Complaint is barred to the extent such claims infringe on Scientific Games' right to free speech.

ADDITIONAL DEFENSES

Scientific Games reserves the right to assert additional defenses that may become known or available to it during pretrial proceedings, including but not limited to the affirmative and other defenses that have been asserted or that may be asserted by defendants in the related cases (as

1 identified in the Notice of Related Cases filed by Scientific Games on May 14, 2018 (Docket No.
2 16)).
3

4 **SCIENTIFIC GAMES CORPORATION'S PRAYER FOR RELIEF**

5 Scientific Games respectfully requests that the Court grant the following relief:

- 6 A. Dismiss all of Plaintiff's claims with prejudice;
7 B. That no class action be permitted under Fed. R. Civ. P. 23 and no class be certified
8 under Fed. R. Civ. P. 23;
9 C. Award costs of suit, including reasonable attorneys' fees, to Scientific Games;
10 D. Order such other relief as the Court may deem just and proper.

11
12
13 DATED: January 18, 2019
14

15 *s/Kathleen M. O'Sullivan*
16 Kathleen M. O'Sullivan, WSBA No. 27850
17 Nicola C. Menaldo, WSBA No. 44459
18 Tyler S. Roberts, WSBA No. 52688

19 **Perkins Coie LLP**
20 1201 Third Avenue, Suite 4900
21 Seattle, WA 98101-3099
22 Telephone: 206.359.8000
23 Facsimile: 206.359.9000
24 Email: KOSullivan@perkinscoie.com
25 NMenaldo@perkinscoie.com
26 TRoberts@perkinscoie.com

27 Attorneys for Defendant
28 Scientific Games Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the date below I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated this 18th day of January, 2019.

/s/ Kathleen M. O'Sullivan